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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable SAM BROWNBACK, a Senator from the State of Kansas.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

God most high, You rule forever and supervise the nations with justice. We thank You for Your grace and mercy. You are faithful to all who depend on You. Keep us from the gates that lead to ruin.

Bless our Senators; empower them to speak for justice, to love mercy, and to embrace humility. This day, give them the wisdom to plant seeds that will produce a bountiful harvest in the months ahead. Keep them in Your care and make certain that each step they take is sure.

Bless the members of each Senator's staff. Give each of us love that will follow You into a bright future. We pray in Your powerful Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable SAM BROWNBACK led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 9, 2005.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable SAM BROWNBACK, a Senator from the State of Kansas, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. BROWNBACK thereupon assumed the Chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Kentucky is recognized.

SCHEDULE

Mr. MCCONNELL. Mr. President, this morning, following the 60 minutes of morning business, we will resume debate on the bankruptcy legislation. Yesterday, by a vote of 69 to 31, we were able to invoke cloture on the bill; therefore, we will finish the bill this week. Once we return to the bill this morning, there will be 40 minutes of debate prior to a series of votes on four of the pending amendments. These four votes can be expected to begin at around 11:30 this morning.

We will continue to work through the pending germane amendments to see which are ready for rollcall votes. And I presume we will have another series of votes later on today. We encourage Senators who have pending amendments to review whether they really need to ask for a recorded vote on each of their amendments. Perhaps we can further limit the number of amendments that will require rollcall votes so we can finish this bill at a reasonable hour, even today.

I thank my colleagues for their hard work on the bill. We are on the cusp here, on the verge of completing another very important piece of legislation in the early part of this Congress. We would like to wrap it up today if at all possible.

Mr. President, I yield the floor.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for up to 60 minutes with the first 30 minutes under the control of the majority leader or his designee and the second 30 minutes under the control of the Democratic leader or his designee.

Who yields time?

The Senator from the great State of Tennessee.

Mr. ALEXANDER. Thank you, Mr. President. I ask unanimous consent to speak for up to 10 minutes in morning business.

The ACTING PRESIDENT pro tempore. The Senator is recognized for up to 10 minutes.

MAJORITY RULE FOR CONFIRMING JUDGES

Mr. ALEXANDER. Mr. President, during the last session of Congress, Senators on the other side of the aisle blocked an up-or-down vote 20 times on 10 of President Bush's nominees for the Federal appellate courts. Filibusters were threatened against five more judicial nominees. With one possible exception, this has never happened before. The Senate has a 200-year tradition of majority rule when it comes to confirming judges. In fact, until the last session of Congress, the idea of not voting on a President's judicial nominee once it reached the floor was unthinkable.

It would be difficult to imagine a case in which passions ran higher than during the confirmation proceedings for Justice Clarence Thomas in 1991. Yet President Bush nominated Clarence Thomas in July of 1991, and 3

months later the Senate voted to confirm him, 52 to 48. There was never any discussion of blocking his nomination by blocking an up-or-down vote.

So in the spirit of compromise, I would like to, once again, offer my solution for avoiding what some in the minority call the ''nuclear option'' that would change Senate rules to prevent filibusters of President Bush's judicial nominees.

In an address on this floor 2 years ago, on March 17, 2003, I said I would reserve the right to vote against any judicial nominee of any President but that I would not filibuster the qualified court nominee of any President. That was before I knew whether the President would be named Bush or Kerry.

This is what I said then:

Before I finish my remarks, I make this pledge. I may be here long enough, and I hope it is a while, before I have an opportunity to cast a vote for a nominee for a Federal judgeship that is sent over by a Democratic President, but I can pledge now how I will cast my vote. It will be the same way I appointed 50 judges when I was Governor. I look for good character. I look for good intelligence. I look for good temperament. I look for good understanding of the law and of the duties of judges. I will look to see if this nominee had the aspect of courtesy to those who come before the court. I will reserve the right to vote against some extremists, but I will assume that it is unnecessary and unethical for the nominee to try to say to me how he or she would decide a case that might come before him or her. When it comes time to vote, when we finish that whole examination, I will vote to let the majority decide.

That is what I said 2 years ago. I also said:

In plain English, I will not vote to deny a vote to a Democratic President's judicial nominee just because the nominee may have views more liberal than mine. That is the way judges have always been selected. That is the way they should be selected.

Mr. President, that was my pledge 2 years ago. That is my pledge today. And if a few other Senators of both parties would individually make this same pledge to eventually allow up-or-down votes on all judicial nominees, then there would be an end to this discussion of the so-called nuclear option.

I have no doubt that changing the Senate's cloture rule by a majority vote is clearly constitutional. Some have argued that the Senate's cloture rule, which allows just 41 of us to block up-or-down votes, carries over from one Congress to the next by rule V. But no less an authority than the distinguished Senator from West Virginia, when he was majority leader, argued very persuasively and with great common sense that this is not true. He said:

This Congress is not obliged to be bound by the dead hand of the past. The first Senate, which met in 1789, approved 19 rules by a majority vote. Those rules have changed from time to time. . . . So the Members of the Senate who met in 1789 and approved that first body of rules did not for one moment think, or believe, or pretend, that all succeeding Senates would be bound by that Senate. . . . It would be just as reasonable to say that one Congress can pass a law providing that all future laws have to be passed by two-thirds vote. Any Member of this body knows that the next Congress would not heed that law and would proceed to change it and would repeal it by majority vote.

That was the Senator from West Virginia talking. So, very simply, the Constitution provides that 51 Senators can change Senate rules to allow a majority to cut off debate on a President's nominee of an appellate court judge.

Now, that does not mean that we ought to rush to make a change in that way. To extend the analogy, nuclear weapons have been effective in world history because of the threat of their use, not because of their actual use. And that has been true here on this Senate floor.

In the debates on the adoption of Rule XXII on the Senate floor in 1917, and later modifications in 1953 to 1959, and then 1960 to 1975, the debate and eventual compromises were driven by the threat of the constitutional option, which we are discussing today.

The chairman of our Judiciary Committee, Senator ARLEN SPECTER, has said he ''intends to exercise every last ounce of [his] energy to solve this problem without the nuclear option.'' I hope he will continue that effort.

The Senate protects the minority party's rights for a reason. In writings about early America, Alexis De Tocqueville warned that one of the potential failings of democracy would be the ''tyranny of the majority.'' South Africa succeeded in creating a constitutional government because the new Black majority was willing to protect the minority rights of White citizens. As we watch the people of Iraq struggle to create a constitutional government, we know that a major sign of their success will be whether they are able to include and protect the rights of Sunnis who are only 20 percent of the country but who formerly dominated the country.

I can remember back when I came here as a legislative assistant to Howard Baker in the Senate in 1967, Republicans were the ones worrying about protecting minority rights then. There were 64 Democrats and 36 Republicans. And then, 10 years later, when I came back to the Senate as an aide to Senator Baker for a few months, when he was elected Republican leader, there were 38 Republicans. In 1979, when the distinguished Senator from West Virginia made his persuasive argument that a majority of the Senate could change Senate rules, there were 58 Democrats and 41 Republicans.

So just as our Republican majority should be cautious about making changes that would lessen minority rights, I would respectfully suggest that the Democratic minority should be equally cautious about provoking such a change.

One way, of course, to avoid provoking rules changes would be for the Democratic Senators who opposed the President's nominees in the last session to look them over again and reconsider their basis for opposition.

For example, I believe if some of the Senators on the other side would really study the record of Judge Charles Pickering of Mississippi, they would be impressed with his commitment to civil rights. At a time when it was hard to do, he testified against a grand wizard of the Ku Klux Klan in 1967, and did it in open court. At the same time, he put his children in public schools when many White Mississippians were putting their children in what were called ''segregation academies.''

Any Senator who carefully looks at the record of former Attorney General Bill Pryor of Alabama, I believe, would admire his record on civil rights. He was a law clerk for Judge John Minor Wisdom, probably the leading civil rights Federal judge of the last century. Bill Pryor showed, as attorney general, he could take a position on abortion, on prayer before football games, on reapportionment, and on displaying the Ten Commandments that were at odds with his personal views because he believed the decisions of the Supreme Court and the U.S. Constitution required it.

Both Judge Pickering and Judge Pryor have served in recess appointments and have even more of a record now to consider favorably.

But the other way to avoid a lengthy and damaging procedural battle is simply for individual Senators now to declare their willingness to support allowing an up-or-down vote of any qualified nominee for the bench by any President. This would apply to this Republican President's nominees or to some future Democratic President's nominees.

I do not know what terrible grievances in the past have caused such strong feelings on the other side causing them to take these unprecedented steps to block an up-or-down vote on nominees once the nominee gets to the floor. As I say, there is a 200–year tradition—a 200–year tradition—in this body of then moving to an up-or-down vote.

It never happened before like this. And if it continues, even though I hope it does not, it will almost certainly force a Senate rules change. I hope we don't come to that. I have suggested two ways to avoid it. I have taken a step myself to forgo some of my rights as an individual Senator as one way to help solve the problem. I hope others will do the same.

I ask unanimous consent that my remarks from March 17, 2003, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Mr. President, I am a new Senator. I am aware of the traditions of the Senate, one of which is that a new Senator is not expected to say much—at least throughout the year is not expected to say much—to begin with until they have something of importance to

say. So I have not said much. I had been planning to make my first remarks on this floor next Tuesday on the issues I care most about, which are the education of our children and putting the teaching of American history and civics back in its rightful place in our schools so that our children can grow up knowing what it means to be an American. I planned on doing that next Tuesday. But I have decided to make some remarks today—earlier than expected because I am disappointed in what I have heard in the debate about Miguel Estrada.

Like my friend from Missouri, I have had the opportunity to preside in the last few days. That is one of the honors that are accorded new Members of the Senate. I have been listening very carefully. My disappointment has increased with each of these 10 days as the debate has continued.

I am disappointed first because I believe our friends on the other side of the aisle are being unfair to Miguel Estrada. I am most disappointed in them because I believe if the direction of this debate continues as it is going—and I heard the comments of my friend from Missouri yesterday on this same matter—if we continue in the same direction, we run the risk of permanently damaging the process by which we select Federal judges and by which we dispense justice in the United States. I am disappointed because this is not what I expected when I came to the Senate.

I may be new to the Senate, but I know something about judges. I am a lawyer. I once clerked for a U.S. Attorney General. His name was Robert Kennedy. I once clerked for a great Federal appellate judge. His name was John Minor Wisdom of New Orleans. I once worked in this body 36 years ago for Senator Howard Baker, a great lawyer. I watched this body as it considered and confirmed men and women to the Federal courts of this land. As Governor of Tennessee for 8 years, I had the responsibility of appointing—and did appoint—nearly 50 men and women to judgeships all the way from chancellorships to the supreme court.

I know pretty well the process we have followed in the Senate and in this country for the last couple of centuries.

It is fairly simple. It can be expressed in plain English. The Executive nominates, the Senate considers, and then confirms or rejects the nomination; and in doing so, what the Senators have always looked for, mainly, has been good character, good intelligence, good temperament, a good understanding of the law and the duties of a judge, and whether a nominee seems to have courtesy for those who may come before him or her. And it has always been assumed that it is unnecessary—and, in fact, it is unethical by the standards of most of the judicial canons in this country—for the nominee to try to say how he or she would decide a case that might come before him or her.

Then, after all that examination is done in the Senate, there is a vote. And under our constitutional traditions, the majority decides.

I have been listening very carefully, and that is not what is happening. The other side has simply decided that it will not allow the Senate to vote on the nomination of Miguel Estrada. In doing so, it is doing something that has never been done for a circuit court of appeals judge in our Nation's history.

In those hours that I have presided over this body in the last few days, I have been listening very carefully to see what reasons our friends on the other side could give for coming to such an extraordinary conclusion about whom I have come to learn is an extraordinary individual, Miguel Estrada.

I have been listening carefully for the answers, especially to these three questions: No. 1, what is wrong with Miguel Estrada? What is wrong with him? No. 2, why can't we vote on Miguel Estrada, after 10 days of debate? And, No. 3—most importantly—why should we change the constitutional tradition that a majority of the Senate will decide whether to confirm Miguel Estrada? Because what they are saying, really, is that he will need to get 60 votes—60 votes—instead of 51.

I have had the privilege of listening to each of their arguments. As my friend from Missouri knows, they first try one argument, and it does not go so well. Then they move to another argument, and it does not stand the light of day. And then they move to another one.

But let me tell you what I have heard as I have listened to the debate.

First, they said—it would be hard to imagine that anyone could say this with a straight face, but we had many straight faces on the other side of the aisle saying this—that he was not qualified to be a Federal appellate judge.

You do not hear that argument very much anymore because that is almost a laughable comment if it were not such a serious matter.

But let's go over this. This man isn't just qualified; if this were sports, he would be on the Olympic team, and he would be getting an award for ''American Dream Story of the Year.''

Here is a man who came to this country at age 17 from Honduras. He had a speech impediment. He spoke very little English. And within a short period of time, he was attending Columbia University, one of the most prestigious universities in America.

Then he went to Harvard Law School. Now, it is really hard to get into Harvard Law School. It has great competition. Everyone who is applying to a law school around the United States of America this year—and I know a great many of them—think about it. This young man, in a few years, was admitted to Harvard Law School. And not only that, he became an editor of the Harvard Law Review and graduated magna cum laude.

This is a dream resume, but it is not even over.

Then he went to the Second Circuit as a law clerk. Then he became a clerk for a Supreme Court Justice. By now he was in the top 1 percent of 1 percent of all law school students in the country, with the kind of resume for a lawyer every law firm in the country would want to hire. He has a record that almost everyone would admire.

Then he went to the Southern District of New York, one of the most competitive places, to be hired for training there.

Then he was in the Solicitor General's Office. To those who are not lawyers or who do not keep up with this sort of thing, just being in the Solicitor General's Office might not sound like such a big deal, but those are the plum positions. The way I understand that office, there are a couple of political appointees there—the Solicitor General and his Deputy—and there are about 20 career lawyers. Miguel Estrada was one of those lawyers. They are there because they are not just good, they are the best in America. They have the best resumes. They have been the clerks to the Supreme Court Justices. They are going to be the greatest lawyers. It is the most competitive position in which you can be.

And there he is, Miguel Estrada, coming here at age 17, barely speaking English, making his way into there. He worked there for the Clinton administration and the Bush administration. Then he went to one of the major law firms of America. And he has argued 15 cases before the Supreme Court of the United States.

That is an incredibly talented record. There is almost no one who has been nominated for any judgeship in our country's history who has a superior record. For anyone to have even suggested for 15 minutes that Miguel Estrada is not superbly qualified to be a member of the United States Court of Appeals—for anyone to even suggest that—it is difficult to see how one could do that with a straight face.

Little has been made about what he did in the Solicitor General's Office. I think it is worth talking about that. These talented young men and women have the job of helping the Solicitor General make decisions about what to do in cases in which the United States is a party. That means they review all the decisions that come against us, the United States of America. They are the lawyers for us, the United States of America.

They write memoranda and they write opinion and they must argue back and forth. And they must argue about every side of every issue. And our friends on the other side have come up with straight-face argument No. 2, which is that somehow Mr. Estrada, who does not even have all those memoranda, should be penalized because the U.S. Government does not want to hand those memoranda, that were exchanged back and forth between the various Solicitor General's assistants, over to the Senate.

We have never done that. There are seven living former Solicitors General of the United States, and seven—all of them—have written a letter to this body saying that has never been done, and it never should be done, for obvious reasons. If it were done, you would never have any straightforward memoranda left in that office. It protects us, the United States. And that never should even be considered to be held against Mr. Estrada.

So is he qualified? It is hard to imagine someone who is better qualified. I consider it a great privilege to come to the Senate and find a President who discovered such an extraordinary person to nominate for the Court of Appeals for the District of Columbia Circuit. Such a story should give inspiration to men and women all over America, that this is the country to which you can come, regardless of race or background or whatever your condition, and dream of being admitted to the best universities, finding the best jobs in a short period of time, and being nominated by the President of the United States for such a court.

What a wonderful story. And what an embarrassing event it is to have our friends on the other side to even take the time of this Senate trying to suggest such a person is not qualified. So let's just throw that argument away and put it in the drawer.

Since that argument did not fly, they then moved to argument No. 2, which is equally difficult to offer with a straight face, if I may respectfully say so. They said he has no judicial experience.

Now, this argument is still being made. I heard the distinguished Senator from New York, last night, in an impassioned address, right over on the other side, say he has never been a judge, and we don't know what his opinions are. Never been a judge—Miguel Estrada cannot be a judge because he has never been a judge.

Well, I am awfully glad that was not the standard that was applied to Justice Felix Frankfurter when President Roosevelt nominated him. He would never have been a judge before he was a Justice of the Supreme Court.

I am glad it was not the standard that was applied to Louis Brandeis before he was nominated to the Supreme Court. I am glad it was not the standard that was applied to

Thurgood Marshall, the first African American who was ever appointed to the Supreme Court of the United States. He had never been a judge. And so should Thurgood Marshall have never been a Justice because he had never been a judge?

When I graduated from New York University Law School, the dean came to see me and said I had a chance to be a messenger down in New Orleans for a man that my dean, Bob McKay, said was one of the three or four best Federal judges in the country. His name was John Minor Wisdom, a great man and a great lawyer. He had never been a judge before President Eisenhower appointed him.

Neither had Elbert Tuttle from Atlanta or John Brown from Texas. The three of them became three of the greatest judges in the South. They presided, having been appointed by a Republican President, over the desegregation of the southern U.S. They were among the greatest judges we have ever had, and they had never been judges.

Of 108 Supreme Court Justices who have been appointed, 43 of those have never been a judge. I have a list somewhere here of judge after judge after judge. Earl Warren; Byron White; Justice Powell; Justice Rehnquist; Justice Breyer; Judge Wisdom's favorite friend on the second circuit, Henry Friendly of New York. He had never been a judge before. Charles Clark; Jerome Frank; John Paul Stevens; Warren Burger; Harold Leventhal; Spottswood Robinson; Ruth Bader Ginsberg, who had never been a judge before she was a Justice. Does that mean she wasn't qualified to sit on this Court?

Why would the other side be taking up the time of the Senate at a time when we are concerned with war with Iraq and the economy is hurting, by making that kind of argument? They would be asked to sit down in any respectable law school in America if they gave that answer. Yet they are here in the Senate trying to persuade us that it makes a point.

In 1980, I appointed George Brown of Memphis as the first African American justice in the history of the State of Tennessee. If George Brown had to be a judge before he had become a justice, I could never have appointed an African American justice, because there were no African American judges at that time. Even today, given the paucity of Hispanics and African Americans and women who are judges, if we were to say that in order for someone to be a judge, before he or she becomes a judge, we would have a terrible, invidious discrimination against men and women who should not be discriminated against, and I am sure my friends on the other side don't want to see that happen.

So even though we have spent days arguing that Miguel Estrada should not be considered because he has never been a judge, that argument has no merit to it whatsoever. We hear it less and less now that it is on the tenth day.

Well, those two arguments didn't fly because here is a superbly qualified person. So they said he didn't answer the questions.

I just had the privilege of hearing the distinguished Senator from California and the distinguished Senator from Minnesota spend a long time talking about that, saying he hasn't answered questions. Well, Mr. President, I am not a member of the Judiciary Committee, but I know they had hearings and I know Members on the other side were in charge of the Senate when they had the hearings. I know the hearings could have gone on as long as they wanted them to because they were in charge. If I am not mistaken, the distinguished Senator from Utah was here. I believe they went on all day long. The hearings were unusually long. Miguel Estrada was there and he answered their questions. Every Senator on the committee had the opportunity to ask followup questions in writing, and two did. The Senator from Massachusetts and the Senator from Illinois did that. Mr. Estrada gave those answers in writing. He has now said to Members of the Senate that he is available for further questions. He will be glad to visit with them.

What does he have to do to answer the questions? Why is there a new standard for Miguel Estrada? Why do we say to him, for the first time, tell us your views in a particular case before we will confirm you? We have tradition rooted in history that it is even unethical to do that. I appointed 50 judges, as I said, when I was Governor. When I sat down with these judges, I didn't ask: How would you rule on TV A and the rate case, or how would you rule on partial-birth abortion, in the abortion case; or what would you do about applying the first amendment to the issue of whether to take the Ten Commandments down from the courthouse in Murfreesboro, TN, or how do you feel about prayer in the schools, or if somebody says a prayer before a football game?

I didn't do that because I didn't think it was right to ask a judge to decide a case before the case came before him, which has been the tradition in this country. We are not appointing legislators to the bench, or precinct chairmen, or think-tank chairmen, or Senators; we are appointing judges. They are supposed to look at the facts and consider the law and come to a conclusion. But they say he didn't answer the questions.

Mr. President, the only way I know to deal with that—because this side says one thing and that side says the other, and since I am not on the Judiciary Committee—is to read the questions and the answers. I wanted to see whether he was asked some questions and whether he gave some answers.

These are the questions and answers, Mr. President. This is the record of the hearing of Miguel Estrada, plus a long memorandum of questions from the Senator from Massachusetts and the Senator from Illinois that he also answered. I will not take the Senate's time to read all of the questions and answers, but since they keep saying he didn't answer the questions, let me give some examples.

The chairman of the committee says: Mr. Estrada, we have heard you have held many strongly-held beliefs. You are a zealous advocate. That is great. You know, lawyers who win cases are not the ones who say ''on the one hand, this, on the other hand, that.'' They are zealous. But you also have to make sure, if you are going to enforce the laws, that your personal views don't take over the law. Senator Thurmond has asked every single nominee I have ever heard him speak to—Republican or Democrat—to speak to that effect. What would you say is the most important attribute of a judge, and do you possess that?

A very good question.

Answer: The most important quality for a judge, in my view, Senator Leahy, is to have an appropriate process for decisionmaking. That entails having an open mind, it entails listening to the parties, reading their briefs, going back behind the briefs and doing the legal work needed to ascertain who is right in his or her claims. In courts of appeals court where judges sit in panels of three, it is important to engage in deliberations and give ears to the views of colleagues who may have come to different conclusions. In sum, to be committed to judging as a process that is intended to give us the right answer and not a result. I can give you my level best solemn assurance that I firmly think I have those qualities, or else I would not have accepted the nomination.

''Does that include the temperament of the judge?'', asked the chairman.

Mr. Estrada said: Yes, that includes the temperament of a judge. To borrow somewhat from the American Bar Association, the temperament of a judge includes whether he or she is impartial and openminded, unbiased, courteous, yet firm, and whether he will give ear to people who have come into his courtroom and who don't come in with a claim about which the judge may at first be skeptical.

The chairman said: Thank you.

I submit that is a good answer. I appointed 50 judges and I would have listened to that question. I would give him an A-plus on that.

Here is the Senator from Iowa: Before I make some comment, I want to ask three basic questions.

This is in the hearing with Mr. Estrada. This is the man who the other side says doesn't answer questions.

The Senator from Iowa: In general, Supreme Court precedents are binding on all lower Federal courts, and circuit court precedents are binding on district courts within a particular circuit. Are you committed to following the precedents of the higher courts faithfully, giving them full force and effect even if you disagree with such precedents?

Mr. Estrada: Absolutely, Senator.

How could you make a better answer than that? You could either say yes or no. He said yes.

The Senator from Iowa: What would you do if you believed the Supreme Court or court of appeals had seriously erred in rendering a decision? Would you, nevertheless, apply that decision, or would you use your own judgment on the merits, or the best judgment of the merits?

Mr. Estrada: My duty as a judge, and inclination as a person and as a lawyer of integrity would be to follow the orders of the highest court.

The Senator from Ohio: And if there were no controlling precedent dispositively concluding an issue with which you were presented in your circuit, to which sources would you turn for persuasive authority?

Mr. Estrada: When facing a problem for which there is not a decisive answer from a higher court, my cardinal rule would be to seize aid from any place I could get it. Depending on the nature of the problem, that would include related case law and other areas higher courts had dealt with that had some insights to teach with respect to the problem at hand. It could include history of the enactment, in the case of a statute, legislative history. It could include the custom and practice under any predecessor statute or document. It could include the view of academics to the extent they purport to analyze what the law is instead of prescribing what it ought to be, and, in sum, as Chief Justice Marshall once said, to attempt not to overlook anything from which aid might be derived.

I give him an A-plus for that. That was a good question, and he gave a superb answer, just the kind of answer I think an American citizen who wants to appear before an impartial court in this country would hope to hear. I do not think we want to hear: Welcome to the court, Mr./Ms. Litigant. We have here your Democratic court; we have here your Republican court. If your views are all right, you might get the right hearing. You would want a judge who said what Mr. Estrada said.

The Senator from Massachusetts, who has been extremely critical of Mr. Estrada, asked a more detailed question. Mr. President, you may be wondering why I am going into such detail when this is available to the whole world, including the Senators on the

other side. The problem is perhaps someone has not bothered to offer this book to our friends on the other side because they keep coming down here while you and I are presiding day in and day out for 10 straight days and saying Mr. Estrada has not answered the questions. My suggestion is he has answered question after question, and he has done a beautiful job of answering the questions.

Let me take a few more minutes and give examples of answering questions.

The Senator from Massachusetts: Now, Mr. Estrada, you made the case before the court that the NAACP should not be granted standing to represent the members. As I look through the case, I have difficulty in understanding why you would believe the NAACP would not have standing in this kind of case when it has been so extraordinary in terms of fighting for those—this is the NAACP—and in this case was making the case of intervention because of their concern about the youth in terms of employment, battling drugs, and also voting.

In other words, Mr. Kennedy was saying: Mr. Estrada, how can you do this when the NAACP is on the other side?

Mr. Estrada's answer: The laws that were at issue in that case, Senator Kennedy, and in an earlier case, which is how I got involved in the issue, deal with the subject of street gangs that engage in or may engage in some criminal activity. I got involved in the issue as a result of being asked by the city of Chicago—the last time I checked, the mayor of the city of Chicago was a Democrat, a good mayor, but just so I would not want anyone to think this was a partisan comment—which had passed by similar ordinance dealing with street gangs. And I was called by somebody who worked for Mayor Daley when they needed help in the Supreme Court in a case that was pending on the loitering issue. I mention that because after doing my work in that case, I got called by the attorney for the city of Annapolis, which is the case to which you are making reference. They had a somewhat similar law to the one that had been at issue in the Supreme Court. Not the same law. They were already in litigation, as you mentioned, with the NAACP. By the time he called me—this is the lawyer for the city—he had filed a motion for summary judgment making the argument that you outlined. And he had been met with the entrance into the case by a prominent DC law firm on the other side. He went to the State and local legal center and asked: Who can I turn to to help? And they sent him to me because of the work I had done in the Chicago case. Following that, I did the brief, and the point on the standing issue that you mentioned is that in both Chicago and in the Annapolis ordinance, you were dealing with types of laws that had been passed with significant substantial support from the minority communities. I have always thought that it was part of my duty as a lawyer to make sure that when people go to their elected representatives and ask for those type of laws to be passed to make the appropriate arguments that a court might accept to uphold the judgment of the democratic people. In the context of the NAACP, that was relevant to a legal issue because one of the requirements we argued for representational standing—those who might be listening may think this is awfully detailed, awfully specific, awfully long. Mr. President, that is my point. Senator Kennedy asked an appropriate and very detailed question about an issue involving street gangs in Chicago where Mayor Daley asked Mr. Estrada to help, and Mr. Estrada gave Senator Kennedy a very detailed, courteous, respectful, specific answer that has taken me 3 or 4 minutes to read, and I am not through yet.

The point is, the other side keeps saying he has not answered questions when he has answered the questions. Not only has he answered them, he has answered them in a way a superbly qualified lawyer with his background might be expected to answer.

The Senator from Alabama: Mr. Estrada, if you are confirmed in this position, and I hope you will be, how do you see the rule of law, and will you tell us, regardless of whether you agree with it or not, you will follow binding precedent?

Mr. Estrada: I will follow binding case law in every case. I don't even know that I can say whether I concur in the case or not without actually having gone through all the work of doing it from scratch. I may have a personal, moral, philosophical view on the subject matter, but I undertake to you that I would put all that aside and decide cases in accordance with the binding case law and even in accordance with the case law that is not binding but seems instructive in the area, without any influence whatsoever from any personal view that I may have about the subject matter.

What Mr. Estrada was saying to the Senator from Alabama was: Mr. Senator, with respect, I may not decide this case the way you would like for it to be decided because I will look at the case law and I will follow the case law, and I might even decide this case the way my personal view would decide it if the case law is different than my personal view. In other words, I think Mr. Estrada is giving the answer that most Americans want of their judges, regardless of what party they are in.

I will give a couple more examples, and I do this because this has gone on now 10 days. All I hear from the other side is he will not answer the questions, he is not answering the questions, when, in fact, there is a book full of questions and answers to which I believe law professors in the law school I attended would give a very high grade.

Here is the Senator from Wisconsin: With that in mind, Mr. Estrada, I would like to know your thoughts on some of the following issues. Mr. Estrada, what do you think of the Supreme Court's effort to curtail Congress' power which began with the Lopez case back in 1995, the Gun-Free School Zone Act. That was a very controversial case. I remember my own view on that. I would have voted against it, even though, obviously, I am for gun-free school zones, but almost every Senator voted for it because they did not want to sound like they were against gun-free school zones, I guess, or whatever the reason might have been, but it was a controversial issue and a hard issue to vote against.

Mr. Estrada: Yes, I know the case, Senator. As you may know, I was in the Government at the time, and I argued a companion case to Lopez that was pending at the same time and in which I took the view that the United States was urging in the Lopez case and in my case for a very expansive view of the power of Congress to pass statutes under the commerce clause and have them to be upheld by the court. Although my case, which was the companion case to Lopez, was a win for the Government on a very narrow theory, the court did reject the broad theory I was urging on the court on behalf of the Government.

In other words, Mr. Estrada was sticking up for the very people who are saying he will not answer their questions. He was there. That was his view, and he talks about it, and he answered the question: Even though I worked very hard in that case to come up with every conceivable argument for why the power of Congress would be as vast as the mind could see, and told the court so at oral argument, I understand I lost on that issue in that case as an advocate, and I will be constrained to follow the Lopez case.

Here we are, Mr. President. Mr. Estrada took a position that I would have voted against. I think he is wrong, but he really did not take a position that I would vote against him. He argued a case before the court that made the very best argument he could make, arguing two lines of opinions. What our friends on the other side are saying is, when he writes a brief or argues a case on behalf of the United States, that somehow that reflects the point of view with which they disagree. I disagree with his brief. I would not consider voting against him or anybody else based on that kind of reason, a very complete answer.

Then if I may, I will state two more. Again, I would not normally think it was necessary for me to read the questions and read the answers, except that virtually every Senator from the other side who has come in has said he has not answered the questions, so I want the American people and my colleagues to know that if they want to know whether he has answered the questions all they need to do is go to the hearing record and read the question and read the answer.

Here is a tough one from the Senator from California: Do you believe that Roe v. Wade was correctly decided?

There is no more a difficult question for a judge who comes before the Senate, because that is a terribly difficult issue about which we all have deeply held moral beliefs, and for all of us almost there is only one right way to answer the question, unless one believes that what judges are supposed to do is to interpret the law and apply the law to the facts.

Mr. Estrada's answer: My view on that judicial function, Senator FEINSTEIN, does not allow me to answer that question.

Then he goes on to explain what he meant.

I have a personal view on the subject of abortion, as I think you know. But I have not done what I think the judicial function would require me to do in order to ascertain whether the Court got it right as an original matter. I have not listened to the parties. I have not come to an actual case or a controversy with an open mind. I have not gone back and run down everything that they have cited. And the reason I have not done any of those things is that I view our system of law as one in which both me as an advocate and possibly, if I am confirmed, as judge have the job of building on the wall that is already there and not to call it into question. I have had no particular reason to go back and look at whether it was right or wrong as a matter of law, as I would if I were a judge that was hearing the case for the first time. It is there. It is the law, as has been subsequently refined by the Casey case, and I will follow it.

That is a complete answer to the most difficult question that could be asked of a nominee for a Federal judgeship.

Senator FEINSTEIN: So you believe it is settled law?

Mr. Estrada: I believe so.

As I mentioned, if I understand the committee's rules, every Senator on the committee has the ability to ask followup questions. I know when I was confirmed by the committee they asked me many followup questions and I worked hard answering the questions 10 or 12 years ago when I was in the first President Bush's Cabinet. These are serious questions and serious answers.

Here I think is a revealing question, and one which may give us some idea of why we are in the 10th day of debate on one of the most superbly qualified candidates ever nominated for the court of appeals, a man who exemplifies the American dream. The Senator from Massachusetts, Mr. Kennedy, asked this question:

Mr. Estrada, do you consider yourself a ''conservative'' lawyer? Why or why not?

Why do you believe that you are being promoted by your supporters as a conservative judicial nominee? Do you believe that your judicial philosophy is akin to that of Justices Scalia and Thomas? Why or why not?

What Senator Kennedy is looking for is to find out is this a conservative lawyer. Is the suggestion that we may want conservative decisions or liberal decisions? I thought we wanted fair decisions, based on precedent, based on fact. I thought we wanted judges who it would be impossible for us to tell where they were coming from before they were coming.

The response from Mr. Estrada is very interesting. He said to the Senator from Massachusetts: My role as an attorney is to advocate my client's position within ethical bounds rather than promote any particular point of view, conservative or otherwise.

A-plus for that, I would say.

Mr. Estrada says: I have worked as an attorney for a variety of clients, including the United States Government, State and local governments, individuals charged with criminal activity.

Are we going to say criminal lawyers cannot be confirmed because they represented people who murdered people and that makes them murderers?

Large corporations, indigent prisoners seeking Federal habeas corpus, in those cases I have advocated a variety of positions that might be characterized as either liberal or conservative.

Remember, this is from a career employee in the U.S. Solicitor's Office in the Clinton and Bush administrations. This is Miguel Estrada: While I am grateful for the wide ranging and bipartisan support that my nomination has received, I have no knowledge of the specific reasons that might cause a particular supporter of my nomination to promote my candidacy for judicial office. As a judge I would view my job as trying to reach the correct answer to the question before me without being guided by any preconceptions or speculations as to how any other judge or justice might approach the same issue.

If all of the Senators would take the time to read Miguel Estrada's answers, some of them might end up in a textbook of appropriate answers, if they believe a judge's job is to apply precedent and consider the facts and come to a fair decision.

Miguel Estrada is qualified, and he is not just qualified, he is one of the most qualified persons ever nominated for the Federal court of appeals. If he, by his very candidacy, represents the American dream that anything is possible, coming here from Honduras at age 17 and making his way through such a distinguished series of appointments, if he has answered the questions in what I would argue is a superior way, the way most nominees would be capable of answering the questions, and I have read just a few of them—I can come back and take another 2 or 3 hours and read more because there are hours of questions and answers—and if a majority of Members of the Senate have signed a letter saying they would vote to confirm him, then why can we not vote on Miguel Estrada?

The only reason can be that our Democratic friends want to change the way judges are selected. They want to say it takes 60 votes instead of 51, and they want to say the criteria for winning those votes is to answer the questions the way they want.

That will give us a Federal judiciary filled with partisans, or an empty Federal judiciary because we will be debating night after night because we cannot agree on whom to nominate and confirm. Such a process, if carried on in subsequent Congresses, will diminish the executive. It will diminish the judiciary. It will reduce the likelihood that facts will be considered and that binding precedent will apply. In other words, it will reduce the chance that justice will be done. It will reduce respect for the courts because it will be assumed that if partisan views on the case are what it takes to get confirmed by the Senate, then partisan views are what it takes to win a case before the court.

It reminds me of the story we tell at home about the old Tennessee judge. He was in a rural county up in the mountains and the lawyers showed up for a case one morning. He said: Gentlemen, we can save a lot of time. I received a telephone call last night. I pretty well know the facts. All you need to do is give me a little memorandum on the law.

We do not want a judiciary where those who come before it believe the judges got their political instructions when they were confirmed and that there is really no need to argue the case.

So Miguel Estrada is superbly qualified. Miguel Estrada has answered question after question, and he has done it very well. A majority of the Senate has signed a letter saying they are ready to vote today to confirm Miguel Estrada, and never in our history have we denied such a vote by filibuster to a circuit court judge. It is time to vote.

Before I finish my remarks, I make this pledge. I may be here long enough, and I hope it is a while, before I have an opportunity to cast a vote for a nominee for a Federal judgeship that is sent over by a Democratic President, but I can pledge now how I will cast my vote. It will be the same way I appointed 50 judges when I was Governor. I look for good character. I look for good intelligence. I look for good temperament. I look for good understanding of the law and of the duties of judges. I will look to see if this nominee has the aspect of courtesy to those who come before the court. I will reserve the right to vote against some extremists, but I will assume that it is unnecessary and unethical for the nominee to try to say to me how he or she would decide a case that might come before him or her. When it comes time to vote, when we finish that whole examination, I will vote to let the majority decide.

In plain English, I will not vote to deny a vote to a Democratic President's judicial nominee just because the nominee may have views more liberal than mine. That is the way judges have always been selected. That is the way they should be selected.

I conclude in equally plain English, and with respect, I hope my friends on the other side of the aisle would not deny a vote to Miguel Estrada just because they suspect his views on some issues may be more conservative than theirs.

These are the most serious times for our country. Our values are being closely examined in every part of the world. Our men and women are about to be asked, it appears, to fight a war in another part of the world. How we administer our system of justice is one of the most important values they are defending. We need to constrain our partisan instincts to get them under control. We need to avoid a result that changes the way we select judges. In my view, we permanently damage our process for selecting Federal judges.

The PRESIDING OFFICER (Mr. VITTER). The Senator from New Mexico.

Mr. DOMENICI. Mr. President, before Senator ALEXANDER leaves the Chamber, I am pleased that I was late so he had to speak first and I could listen to him. His remarks were thoughtful, thought provoking, and conclusive. If Senators on the other side of the aisle will listen to what he said and think it through, they will understand that this situation is going to be resolved. If they continue to insist it be resolved their way, I believe the Senate will decide that they will change procedural rules.

Having said that, I remind those who are listening and those who have lived through very recent history that there have been some contentious nominees that we have considered in recent times and that the American people can vividly remember. Let me remind those listening: We had the nomination of Judge Carswell years past. That was a highly debated nomination. All kinds of things were said about his qualifications, his capacity. There was enough enthusiasm against him—rancor—that if the filibuster had been used and brought to fruition, he probably never would have gotten enough votes to break the filibuster. He would have been defeated that way. But that did not happen. There was an up-or-down vote, and he was defeated.

Remember recently when we thoroughly debated Clarence Thomas, how many weeks that went on; how many days the debate went on. That controversial nomination was not filibustered. There was an up-or-down vote, just as we Senators on this side of the aisle are almost begging the Democrats to let happen for current nominees. It happened in the case of Clarence Thomas and he won by two votes. It is obvious, that if those who opposed him—and they opposed him with a great deal of certainty that he should not go on the bench—would have chosen the course of today, they would have used a filibuster. Why didn't they? They didn't because historically in the Senate, traditionally in the Senate, where there is majority support for a nominee, a filibuster is not used.

Having said that, it is obvious to this Senator that somehow or another in the last 4 years there has been a new idea promulgated that the advice and consent function, which the Constitution says is our prerogative to give to Presidential nominees, allows the other side, when it has an objection to a nominee, to filibuster that nominee. There have been more filibusters in the last 4 years against judges than in all of this body's previous history. It appears that every time there is a contentious nominee, that tactic will be used. That idea was not in this body before 2000. That tactic was not used before to the same degree it is used now. It is an invitation, I say to my friends on the other side of the aisle, for the majority to decide that enough is enough.

The idea that we want to protect the minority goes both ways. Senator ALEXANDER is right. Many of us have been in the Senate on this side of the aisle when we were in the minority. I came here when we only had 38 Republicans. We were the ones crying out for protection. But we didn't filibuster Federal judgeships. We didn't filibuster district

or circuit or Supreme Court nominees. That was for a number of years, not just one or two. For a number of years we were in the minority.

But the problems with requiring a super-majority is a concept that has been discussed by our Founding Fathers. Alexander Hamilton wrote:

To give the minority a negative upon the majority (which is always the case where more than a majority is requisite to a decision) is, in its tendency, to subject the sense of the greater number to that of the lesser.

Obviously, that is the case. Obviously, when we look at judges and history, the Constitution talks about advice and consent and clearly requires that a majority of the Senate consent. Our rules are not the only things that talk about advice and consent. The Constitution does. Our Founding Fathers, fully aware of this Hamiltonian quote, provided in the Constitution the events when more than a majority is required.

The Constitution said to override Presidential vetoes required more than a majority; to remove Federal officers under impeachment required more than a majority; to ratify treaties required more than a majority; to expel a House or Senate member required more than a majority; and to propose constitutional amendments required more than a majority. It did not say such was required when we are exercising our advice and consent power. Had that been a situation in our governance that required a supermajority, it would have been easy for the Founding Fathers to write that in. But they did not.

From this Senator's standpoint, the other side of the aisle, which talks so much about closing down Government if they don't get their way on this, ought to think it through carefully. Closing down the Government is something that ought to be used rarely. Even the words ought to be used carefully. ''Closing down the Government'' could mean we are going to stop funding education. It could mean we are going to close down all the national parks. It could mean we are not going to have enough money appropriated for our military. Closing down the Government, a threat from the other side of the aisle which they think would make us change our minds about this issue, is at least a two-edged sword and probably only a one-edged sword. That sword will be: Woe to those who close down Government over issues such as this.

Recall within the last 15 years, closing down Government was a threat, I regret to say, made by and carried out by some leadership in the House. The issue was thought by them to be paramount. But the public prevailed. The public said: The paramount issue is to keep your Government open, even if your cause is one you believe wholeheartedly in. From my standpoint, the threat is sufficient for me to seriously consider using this constitutional option so that advice and consent will be majoritarian instead of requiring 60 votes in the Senate.

The reason is easy for me. The Senate as an institution—its rules, its process—is marvelous. I have been here a long time. I support it. It is set apart by free debate, by opportunity to amend. But there also is precedent in our rules. There are requirements that the Senate think carefully about what they are doing regarding as important an issue as advice and consent. Some think, that Senator from New Mexico has been here too long; he has frequently said he admires and respects the rules of the Senate and has become accustomed to them. I have frequently said, for those who don't like the rules, wait until you are here 3 or 4 years—you will think they are great. Freshmen think we ought to get things done right now; forget the rules and the procedures. But let them stay here a term, and they understand what the Senate rules mean.

Understanding all that and feeling as I do about these issues, it seems to me we cannot continue to deny a man like Miguel Estrada a seat in the judiciary when there is more than a majority of the Senate who, after hours of debate, is willing to have a vote. The other side knows that such a vote has a majority of support so they prevent a vote from occurring. You can't keep doing that and expect the majority to sit by and say: It is just the current rules, you can't change them; don't worry about it. In fact, that is a dangerous proposition.

The bell will toll. If this is continued, there will be Members such as this Senator who will end up saying: We have had enough. We are willing to abide by the same rules when we are in the minority. It will apply to both Democrats and Republicans. We know some say we will be in the minority one day. Some of us are willing to say: Let it be the case for both, and let us rule by majority vote with reference to judicial appointees.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCONNELL. Mr. President, I rise to offer an historical perspective on the very important issue of the Senate exercising its advice and consent responsibilities on judicial nominations. It has been the subject of considerable discussion, and I wanted to offer some thoughts on the subject myself. I have been around here long enough, in both the majority and the minority, to understand that a Senator may from time to time use a vote on a judicial nomination to protest the nomination or a particular course of action. But what we saw in the 108th Congress was a wholesale departure from the norms and the traditions of the Senate, whereby the use of the judicial filibuster became a commonplace device to stop the President's circuit court nominees.

For the first time in history, a minority of Senators, on a repeated, partisan, and systematic basis, has prevented the Senate as a whole from discharging its constitutional obligation to provide advice and consent on judicial nominations.

This level of obstructionism is truly unprecedented. As justification, those who support this approach have pointed to several nominees of President Clinton on whom it was necessary to file cloture. I was here during that period. I remember exactly what happened.

The fact is it was the Republican leadership in the majority who filed cloture on these very controversial Clinton nominees. This does not show that the Republican Conference was trying to prevent their consideration. Rather, Republicans, who were Members of the opposition party of the President, filed cloture to advance their consideration—to advance their consideration.

If there is any doubt, one need only look at the cloture votes on two of the most controversial Clinton nominees, Marsha Berzon and Richard Paez, and then compare those cloture votes with the votes on the nominations themselves. Doing so reveals two important points.

First, the cloture vote on these nominees was overwhelmingly in favor of ending debate—of ending debate—and proceeding to their confirmation. The cloture vote on the Berzon nomination was 86 to 13. So obviously there were 13 Senators trying to prevent Ms. Berzon from becoming a Federal judge. The cloture vote on the Paez nomination was 85 to 14. Indeed, the vast majority of the Republican Conference—in fact, a supermajority of about 70 percent of our conference—voted for cloture. These plain facts dispute the notion that the Republican Conference was filibustering the Berzon and Paez nominations.

In short, if I could be a bit poetic, a cloture vote does not a filibuster make. A cloture vote does not a filibuster make.

A second point is even more telling. Many of the very same members of our conference who voted for cloture on these nominations then turned around and voted against confirmation because we had serious concerns about the Paez and Berzon nominations. Senator LOTT, who was majority leader at the time, did that, and so did I, voted for cloture, believing that judges should not be filibustered for the purpose of ending their nomination—and then voted against the judge on the up-or-down vote to which all judges are entitled. The confirmation vote on the Berzon nomination was 64 to 34. The

confirmation vote on the Paez nomination was 59 to 39. Obviously, the opponents of Paez could have killed that nominee by a filibuster if they had chosen to do so. Both times we approached the filibuster level of 41 votes. I know how to count votes, and if we had wanted to filibuster the Paez and Berzon nominations, I suspect we could have and probably stopped them both. But the Republican leadership did not whip our caucus to filibuster these two nominations. In fact, it did the opposite. To his great credit, Senator LOTT urged our colleagues not to filibuster these two nominations despite the strong opposition to them within our conference.

That is why Judge Paez and Judge Berzon have been sitting on the ninth circuit for the last 5 years. In fact, today is the fifth anniversary of their confirmation. They were confirmed on March 9, 2000. And for those who point to the Paez and Berzon nominations to try to justify their filibusters, I emphasize again we are talking about Judge Paez and Judge Berzon. So given that many of my Republican colleagues and I opposed both the Berzon and Paez nominations as shown by our votes against the nominations themselves, why did we vote for cloture? We did so because we were mindful of a longstanding Senate norm and precedent that the Senate does not filibuster judicial nominations. That is an unwritten Senate rule. Even if one strongly disagrees with the nomination, the proper course of action under Senate norms and traditions, as they have consistently been understood and applied, is not to filibuster the nominee but to vote against him or her. That is precisely what a supermajority of my conference and I did on the Paez and Berzon nominations, who were two of the most controversial—these were extraordinarily controversial judges that President Clinton had named to the ninth circuit. My Republican colleagues and I honored Senate tradition. We followed the constitutional directive set forth in article II, section 12, that the Senate as an institution as reflected by the will of the majority of its Members, render its advice and consent on the President's nominees. We put propriety over partisanship.

But that precedent has now been changed. Those norms and traditions have been upset.

Therefore, I ask my colleagues to consider the ramifications of continuing down this path of institutionalizing this use of the judicial filibuster as a tool of obstruction. For more than 200 years we have recognized the careful balance our Founding Fathers struck among our three branches of Government. Judicial filibusters pose a danger to this constitutionally required separation of powers.

I believe it is not too late to turn back. It is in the best interests of both great parties and the Senate itself that we restore the norms, traditions, and precedents of the past 200 years that have served this country so well. It is extraordinarily shortsighted. Our friends on the other side of the aisle will have the White House again one day, and the shoe will be on the other foot. They will rue the day, if this precedent is allowed to prevail, that they set this precedent. I think it is time we stood back, took a breath and thought about this institution and respected its norms and traditions.

Mr. President, I yield the floor.

EXPRESSING THE SENSE OF THE SENATE ON TERRORIST ATTACKS AGAINST THE PEOPLE OF SPAIN

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 76, submitted earlier today by Senators LIEBERMAN, ALLEN, and DODD.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 76) expressing the sense of the Senate on the anniversary of the terrorist attacks launched against the people of Spain on March 11, 2004.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motions to reconsider be laid upon the table en bloc, and that any statements related to the resolution be printed in the RECORD, without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 76) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 76

Whereas on March 11, 2004, terrorists associated with the al Qaeda network detonated a total of 10 bombs at 6 train stations in and around Madrid, Spain, during morning rush hour, killing 191 people and injuring 2,000 others;

Whereas like the terrorist attack on the United States on September 11, 2001, the March 11, 2004, attacks in Madrid were an attack on freedom and democracy by an international network of terrorists;

Whereas the Senate immediately condemned the attacks in Madrid, joining with the President in expressing its deepest condolences to the people of Spain and pledging to remain shoulder to shoulder with them in the fight against terrorism;

Whereas the United States Government has continued to work closely with the Spanish Government to pursue and bring to justice those who were responsible for the March 11, 2004, attacks in Madrid;

Whereas the European Union, in honor of the victims of terrorism in Spain and around the world, has designated March 11 an annual European Day of Civic and Democratic Dialogue;

Whereas the people of Spain continue to suffer from attacks by other terrorist organizations, including the Basque Fatherland and Liberty Organization (ETA);

Whereas the Club of Madrid, an independent organization of democratic former heads of state and government dedicated to strengthening democracy around the world, is convening an International Summit on Democracy, Terrorism, and Security to commemorate the anniversary of the March 11, 2004, attacks in Madrid; and

Whereas the purpose of the International Summit on Democracy, Terrorism, and Security is to build a common agenda on how the community of democratic nations can most effectively confront terrorism, in memory of victims of terrorism around the world: Now, therefore, be it

Resolved, That the Senate—

(1) expresses solidarity with the people of Spain as they commemorate the victims of the despicable acts of terrorism that took place in Madrid on March 11, 2004;

(2) condemns the March 11, 2004, attacks in Madrid and all other terrorist acts against innocent civilians;

(3) welcomes the decision of the European Union to mark the anniversary of the worst terrorist attack on European soil with a Day of Civic and Democratic Dialogue;

(4) calls upon the United States and all nations to continue to work together to identify and prosecute the perpetrators of the March 11, 2004, attacks in Madrid;

(5) welcomes the initiative of the Club of Madrid in bringing together leaders and experts from around the world to develop an agenda for fighting terrorism and strengthening democracy; and

(6) looks forward to receiving and considering the recommendations of the International Summit on Democracy, Terrorism, and Security for strengthening international cooperation against terrorism in all of its forms through democratic means.

SUPPORTING THE PEOPLE OF LEBANON

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 77 which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 77) condemning all acts of terrorism in Lebanon and calling for removal of Syrian troops from Lebanon and supporting the people of Lebanon in their quest for a truly democratic form of government.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 77) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 77

Whereas since December 29, 1979, Syria has been designated a state sponsor of terrorism by the Secretary of State;

Whereas on December 12, 2003, the President signed the Syria Accountability and Lebanese Sovereignty Restoration Act of